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4 UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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6 JOE RIVERA, individually and as )

Guardian Ad Litem for )

7 JOSEPH RIVERA V and )

JESSICA RIVERA, minors, and )

8 JOE RIVERA, as Special )

Administrator to the Estate of ) Case No.

9 PAMELA RIVERA, ) CV-S-01-0601-KJD

) (RJJ)

10 Plaintiffs, )

)

11 v. )

)

12 PHILIP MORRIS, INCORPORATED, )

a Virginia Corporation, )

13 )

Defendant. )

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19  
VIDEO DEPOSITION OF MR. KENT L. TEDIN  
20

Taken on behalf of the Plaintiff

21  
Friday, November 8, 2002

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23  
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DISTRICT OF NEVADA

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) (RJJ)  
8 Plaintiffs, )  
)  
9 v. )  
)  
10 PHILIP MORRIS, INCORPORATED, )  
a Virginia Corporation, )  
11 )  
Defendant. )  
12  
13  
14 VIDEO DEPOSITION OF MR. KENT L. TEDIN,  
15 produced, sworn, and examined on the part of the  
16 plaintiffs in an action pending in the United States  
17 District Court within and for the District of Nevada in  
18 re: JOE RIVERA, et al., v. PHILIP MORRIS, INCORPORATED,  
19 on Friday, November 8, 2002, at the Law Offices of  
20 Shook, Hardy & Bacon, L.L.P., One Kansas City Place,  
21 1200 Main Street, Kansas City, Missouri, before KAREN  
22 S. ROGERS, Registered Professional Reporter, Certified  
23 Court Reporter, and Notary Public in and for the State  
24 of Missouri.  
25

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1  
2 A P P E A R A N C E S  
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19 (417) 877-9700

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1 It is hereby stipulated and agreed by and  
2 between counsel for plaintiff and counsel for defendant  
3 that this deposition may be taken by Karen S. Rogers, a  
4 Registered Professional Reporter, Certified Court  
5 Reporter, and Notary Public, thereafter transcribed  
6 into typewriting, with the signature of the witness not  
7 being waived.

8

9 P R O C E E D I N G S

10

11 MS. MATCHETT: We're on the record November

12 8th at 12:52.

13 (The witness was placed under oath by the  
14 court reporter).

15 MR. HOLMAN: I don't know if the court  
16 reporter had all of the individuals identify

17 themselves. I'm James Holman for the plaintiff.  
18 Perhaps the other people at the table, so we have the  
19 individuals in the room, can identify themselves.

20 MR. BOMAN: David L. Boman for defendant,  
21 Philip Morris, Incorporated.

22 MS. FOOS: Kelly Hupp Foos of Shook, Hardy &  
23 Bacon assisting in the defense.

24 THE WITNESS: Kent Tedin, expert witness.

25 MR. HOLMAN: Thank you.

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6

1 MR. KENT L. TEDIN,  
2 of lawful age, called as a witness and having been duly  
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. HOLMAN:

6 Q. Doctor -- do you go by doctor or how  
7 would you like to be --

8 A. Any way is fine. Call me Kent is  
9 perfectly okay.

10 Q. I'll just -- you have a Ph.D., correct?

11 A. Yes, that's correct.

12 Q. Okay. I'll call you Doctor. It's a  
13 little more formal and it obviously is what you are.  
14 Can you please state your full name for the record?

15 A. Kent L. Tedin.

16 Q. And your business address?

17 A. 5808 Annapolis, Houston, Texas, 77005.

18 Q. And you're director of the Department of  
19 Political Science at what university, the University of  
20 Houston?

21 A. Yes, the University of Houston. Actually  
22 I stepped down the first of September. I was chairman  
23 from 1986 until August 31st, 2002. So I'm no longer  
24 chairman.

25 Q. What's your capacity there now?

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7

1 A. I'm professor of political science.

2 Q. Are you full-time?

3 A. Yes.

4 Q. In terms of stepping down, were you just  
5 basically tired of the administrative process?

6 A. Right. I had done the job for 16 years.

7 That's much longer than most chairs do it, and it's  
8 time for someone else to do the job.

9 Q. Right. Enough's enough.

10 A. Right.

11 Q. I'm going to be pretty brief today. I've  
12 gone through your report. I've looked at your  
13 reference materials. I want to fill in some questions.  
14 When was the first time you were contacted by Philip  
15 Morris in the Rivera case?

16 A. I was contacted by David Boman actually  
17 of Shook Hardy. I got a voice mail I think it was in  
18 late September or so asking for a meeting. I got back

19 in touch with him I think sometime in early October.

20 Q. And this would be 2001?

21 A. Right, 2001.

22 Q. And since that time how long -- how many  
23 hours do you think or have you estimated that you've  
24 spent in review of this case?

25 A. Oh, probably 160 or 170 hours.

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8

1 Q. And at what rate?

2 A. \$300 an hour.

3 Q. Prior to being contacted by Mr. Boman,  
4 have you ever looked at another case involving tobacco  
5 litigation?

6 A. Yes.

7 Q. And who else has contacted you regarding  
8 tobacco litigation?

9 MR. BOMAN: At this point I'm going to object  
10 on the grounds that except for cases where Mr. Tedin or  
11 Professor Tedin has been designated as a testifying  
12 witness, I'm going to object on the grounds of  
13 inquiring into other areas on the grounds of privilege  
14 and confidentiality.

15 MR. HOLMAN: Are you telling him not to  
16 answer?

17 MR. BOMAN: Except for in the context of cases  
18 that he has been listed in or has testified in or  
19 submitted an expert report in, yes, I'm telling him not

20 to answer.

21 MR. HOLMAN: I'm going to work on this for  
22 quite a while. I don't believe your objection is  
23 sound. I think that I have the right -- and I'll  
24 rephrase the questions because maybe I don't have the  
25 right to ask names, but certainly in terms of contact  
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9

1 of hours spent in terms of money and remuneration.

2 Q. Doctor, you should take your time in  
3 answering me. It may be that counsel, Mr. Boman, wants  
4 to interject and tell you not to answer. So you might  
5 wait for his response before you do answer. But I do  
6 want to explore it a little bit. When was the first  
7 time you were contacted by any law firm regarding  
8 looking at polls or public information regarding  
9 tobacco knowledge, the types of things you've done in  
10 this particular case?

11 MR. BOMAN: Are you asking in the context of  
12 cases where he has been identified as a witness or just  
13 overall?

14 MR. HOLMAN: That's a good question. Let me  
15 back up and we'll do that.

16 Q. How many cases have you been identified  
17 as a witness for tobacco litigation?

18 A. Four cases.

19 Q. Four cases?

20 A. That's correct.

21 Q. Are there cases other than those four  
22 where you have not been identified as an expert  
23 witness?

24 A. Yes.

25 Q. Have you been asked by either Shook  
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10

1 Hardy or some other law firm to look at general  
2 matters involving tobacco litigation without reference  
3 to a particular case in the past?

4 A. Yes.

5 Q. In those situations when was the first  
6 time that you were asked by a law firm to look at  
7 litigation issues involving tobacco that had no  
8 reference to a specific individual plaintiff who had  
9 been injured or allegedly injured by smoking  
10 cigarettes?

11 A. To my best of my recollection, it  
12 probably would have been in the spring of about 1997.

13 Q. And was that contact by Shook Hardy?

14 MR. BOMAN: I'm going to object at this point  
15 and instruct him not to answer.

16 MR. HOLMAN:

17 Q. Since the spring of 1997, for all cases  
18 -- or for all situations, whether there's a specific  
19 case name or an individual plaintiff or it's general  
20 work, how much time do you believe you've spent in  
21 reviewing or working on tobacco issues in your area of

22 expertise?

23 MR. BOMAN: Again I'm going to object and  
24 instruct him not to answer on the grounds of privilege  
25 and confidentiality.

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11

1 MR. HOLMAN:

2 Q. How much money have you been paid since  
3 1997 for all work that you've performed, whether it's  
4 regarding a specific case or work in general not  
5 related to a specific case involving tobacco litigation  
6 issues?

7 MR. BOMAN: Again I'm going to object and  
8 instruct him not to answer on the grounds of privilege  
9 and confidentiality.

10 MR. HOLMAN: Counsel, you must fully recognize  
11 that these issues in terms of remuneration, hours  
12 spent, other projects, whether associated with the case  
13 or not, and there might be distinct issues there, are  
14 clearly areas of cross-examination and impeachment.

15 We have a tight deadline in terms of this.

16 Our motion, if you continue to do this, will be to  
17 strike this witness because we were not allowed the  
18 opportunity to go into these areas.

19 I think it's relevant. I think it's material.

20 It is certainly allowable cross-examination. We are  
21 not seeking to breach privileges or confidentialities.  
22 I'm not asking for names of cases, attorneys' names, or

23 any of that; simply asking for contact with the  
24 company.

25 Just so you know that the alternative to this  
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12

1 is not to redo the deposition because we simply don't  
2 have time. The alternative is to strike this witness,  
3 and that will be our motion.

4 Q. Other than Shook Hardy, have you worked  
5 for other law firms involving tobacco issues?

6 A. Yes.

7 Q. What other law firms?

8 MR. BOMAN: I'm going to object on the grounds  
9 of confidentiality and privilege and instruct the  
10 witness not to answer.

11 MR. HOLMAN:

12 Q. Other than Philip Morris, have you worked  
13 for other tobacco companies?

14 A. No.

15 MR. BOMAN: Again, I'm going to -- well, I'm  
16 going to instruct the witness not to answer on the  
17 grounds of confidentiality and privilege.

18 MR. HOLMAN:

19 Q. Again, Doctor, you might just pause a  
20 little bit as we go through this process. I just want  
21 the record to be clear. And obviously counsel is  
22 taking whatever course he needs to take, but you need  
23 to give him just the opportunity to object and tell you

24 what to do or not do. Okay?

25 A. Yes, sir.

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13

1 Q. Okay. How many reports have you written  
2 in tobacco litigation?

3 MR. BOMAN: Are you asking about in cases  
4 where he has been disclosed as a witness, like Rule 26  
5 reports?

6 MR. HOLMAN: No, just overall number of  
7 reports.

8 MR. BOMAN: Well, if you're asking for reports  
9 in the context of cases where he was not identified as  
10 an expert, was a nondisclosed, nonconsulting expert,  
11 then I'm going to have to object on the grounds of  
12 confidentiality and privilege.

13 MR. HOLMAN:

14 Q. How many cases are you looking at  
15 presently for tobacco interests?

16 MR. BOMAN: You mean in terms of the cases  
17 that he has been identified in and elicited?

18 MR. HOLMAN:

19 Q. No, these are general questions. Let me  
20 just make it easier for you. I will -- he's been  
21 identified in four cases, as I understand it, correct,  
22 Doctor?

23 A. That's correct.

24 Q. So I will specifically talk about those

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14

1 right now. And so in total since spring of 1997 how  
2 many reports have you authored for individuals,  
3 companies, law firms in tobacco litigation related  
4 areas?

5 MR. BOMAN: Again, I'm going to object and  
6 instruct him not to answer on the grounds of privilege  
7 and confidentiality.

8 MR. HOLMAN:

9 Q. In any of those reports that you have  
10 authored, have your opinions ever changed in terms of  
11 what you concluded common knowledge was based upon  
12 public opinion polls.

13 MR. BOMAN: I'm going to object to that on the  
14 grounds that it assumes facts not in evidence but also  
15 on the grounds of privilege and confidentiality and  
16 instruct him not to answer.

17 MR. HOLMAN:

18 Q. Of the four cases that you have been  
19 disclosed, have you authored reports in each of those  
20 cases?

21 A. No.

22 Q. How many reports have you authored in  
23 the four cases where you have been disclosed as an  
24 expert?

25 A. One.

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15

1 Q. And that's this case?

2 A. That's correct.

3 Q. Of the other three cases, what are the  
4 defendants' names?

5 A. I don't recall.

6 Q. Are there companies other than Philip  
7 Morris involved?

8 A. Again, I don't recall.

9 MR. HOLMAN: Counsel, let me just put on the  
10 record, your declaration and report for this defendant  
11 is delinquent and insufficient in that it does not  
12 mention the cases, it doesn't cite the names of the  
13 cases or give cites to the actual cause numbers of the  
14 cases, and so we'll move to strike this witness based  
15 upon that also. There's no way for me to explore with  
16 this witness since he doesn't recall what those cases  
17 are and it's not provided in the materials.

18 MR. BOMAN: Let me just address that. What's  
19 provided in the materials is what's required by the  
20 rule, which is the cases where he has testified either  
21 by deposition or at trial in the past four years. I'm  
22 not aware of any obligation for him to list any other  
23 cases.

24 MR. HOLMAN: You may be right about that. I  
25 guess I was assuming -- I'm at page 2, paragraph 7 of  
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16

1 your report. And let me explore this because, counsel,  
2 you may be correct.

3 Q. It says you've testified five times  
4 previously as an expert on public opinion matters. Are  
5 any of those five times that you've previously  
6 testified related to tobacco issues?

7 A. No.

8 Q. Have you cited the cases where you've  
9 testified previously in your report?

10 A. I've testified -- I've cited the cases in  
11 my vitae that I'm required to list under legal  
12 requirements.

13 Q. In your curriculum vitae?

14 A. Right. I think it's on the last page.

15 Q. Right. And none of those are tobacco  
16 cases?

17 A. No.

18 Q. Have you been deposed in any of the  
19 tobacco cases at all?

20 A. No.

21 Q. Have you testified in any of the tobacco  
22 cases?

23 A. No.

24 Q. The tobacco cases where you've been  
25 disclosed as an expert, what states are they in?

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17

1 A. Missouri and Nevada.

2 Q. Are there more than one defendant in the  
3 Missouri case?

4 A. I don't know. I know there are three  
5 cases, but I honestly don't know. The truth of the  
6 matter is I may be -- the limit of my work in the  
7 Missouri case is about a two-hour meeting with the  
8 lawyers.

9 Q. Okay. So there are three cases in  
10 Missouri and one case in Nevada which is the Rivera  
11 case?

12 A. That's correct.

13 Q. And the one where you've been disclosed  
14 in Missouri, are they three separate cases?

15 A. That's my understanding.

16 Q. And I take it by your answer since you've  
17 only spent about two or two and a half hours on those  
18 cases, they're relatively new?

19 A. Yes, that's correct. At least new to  
20 me.

21 Q. New to you. I understand. They sound  
22 like they're state cases, not federal court, or do you  
23 know the difference?

24 A. My understanding is that they're state  
25 cases.

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18

1 Q. Now what -- when you were first contacted  
2 by -- in spring of '97, what was asked of you in terms  
3 of your expertise?

4 MR. BOMAN: I'm going to object on the grounds  
5 that that's privileged and confidential and instruct  
6 him not to answer.

7 MR. HOLMAN:

8 Q. When you were first contacted and  
9 following that contact in spring of 1997, were you  
10 supplied with information or materials from whoever  
11 contacted you?

12 A. Again, I'm going to instruct the witness  
13 not to answer on the grounds of privilege and  
14 confidentiality.

15 Q. Did you ever meet with anybody at any of  
16 the tobacco companies, employees of tobacco companies,  
17 whether it be Philip Morris or any other company since  
18 spring of 1997?

19 MR. BOMAN: I'm going to object on the grounds  
20 of confidentiality and privilege and instruct the  
21 witness not to answer.

22 MR. HOLMAN:

23 Q. Prior to -- or subsequent to the spring  
24 of 1997 but before you were identified as an expert in  
25 this particular case, did you ever meet with any

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19

1 individual from either a firm or Philip Morris or a

2 tobacco -- strike that.

3 After you were contacted in the spring of '97  
4 but before you were listed as an expert or became  
5 involved in the Rivera case, which I understand was  
6 last fall of 2002 --

7 A. 2001.

8 Q. -- did you ever meet -- I'm sorry, 2001,  
9 thank you -- did you ever meet with attorneys from some  
10 of the tobacco companies and discuss your opinions  
11 regarding public knowledge of tobacco -- or risks  
12 associated with tobacco smoking?

13 MR. BOMAN: I'm going to object on the grounds  
14 of privilege and confidentiality and instruct the  
15 witness not to answer.

16 MR. HOLMAN:

17 Q. Have you ever been given internal  
18 documents from Philip Morris or any of the other  
19 tobacco companies to see what they thought public  
20 opinion was regarding the risk -- regarding risks of  
21 smoking?

22 MR. BOMAN: You mean ever?

23 MR. HOLMAN: Ever.

24 A. Okay, I --

25 MR. HOLMAN: At any time.

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20

1 A. I understand that what we're talking  
2 about here is the Rivera case and the time period

3 forward, is that correct?

4 Q. No, no. Anytime you have a question like  
5 that, please go ahead and ask it. I'm talking about at  
6 any time, spring '97 forward, not just the Rivera case.  
7 Have you been provided internal documents by any --  
8 from any source, from Philip Morris or other tobacco  
9 companies, that discuss issues involving your  
10 expertise, common knowledge, public opinion polls and  
11 the like?

12 MR. BOMAN: To the extent that you're asking  
13 the witness to answer that question in the context of  
14 litigation other than which he has been identified as  
15 an expert, listed as an expert, I'm going to instruct  
16 him not to answer on the grounds of privilege and  
17 confidentiality. But if you want him to answer it in  
18 the context of cases --

19 MR. HOLMAN: All right. Counsel, I'll ask  
20 that question --

21 MR. BOMAN: Okay.

22 MR. HOLMAN: -- I really appreciate your  
23 assistance, but I'll ask the questions I want, thank  
24 you.

25 MR. BOMAN: You're welcome.

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21

1 MR. HOLMAN:

2 Q. And I'll make them very distinct, Doctor,  
3 so you don't misunderstand. I'm not trying to get

4 things that your attorney does not want to disclose, so  
5 I think I'm trying to make the questions as obvious as  
6 possible. Again, if you have questions about what I'm  
7 talking about, be sure to ask me before you answer and  
8 again give your counsel time to object.

9 A. Thank you.

10 Q. I guess what I'm looking for, even though  
11 I don't get you to answer, I want to know the total  
12 amount of information that's been made available to  
13 you, not some -- not some date defined by simply we've  
14 now placed a name on the case of the work that you've  
15 been doing for the past five years.

16 So -- and I want to get back into those five  
17 years before -- you know, you're working for these  
18 people since March of '97. You don't get identified  
19 until fall of 2001. Maybe that's four years or four  
20 and a half years, I'm not sure exactly what the math  
21 is.

22 During that time you've performed work for  
23 these people, and what I really want to explore is is  
24 what did you do during that time that led you to then  
25 be disclosed and now have opinions and a report as an  
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22

1 expert in the Rivera case.

2 So I am focusing on areas prior to fall of  
3 2001. Did you receive internal documents from Philip  
4 Morris where they provided to you during that time

5 frame that you've reviewed in preparation -- that you  
6 reviewed at any time?

7 MR. BOMAN: You know, again I'm going to  
8 object to the extent that you're asking him for  
9 information from contexts where he was working as a  
10 nondisclosed consulting expert on the grounds of  
11 privilege and confidentiality. And with the  
12 understanding you're going to ask about the periods  
13 where he was disclosed later, then I'll just instruct  
14 him not to answer.

15 MR. HOLMAN: Well, don't assume anything,  
16 counsel. You make whatever objections you want to make  
17 based upon the questions as they're posed.

18 Q. Do you take into consideration as an  
19 expert who's been disclosed in the Rivera case items of  
20 information that you obtained prior to 2001, fall of  
21 2001?

22 A. No, I did not.

23 Q. So none of the information that was ever  
24 provided to you is included within your report -- or do  
25 you consider to be relevant to your report that you

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1 authored in this particular case?

2 A. Yeah, to make it clear, nothing that I  
3 did prior to my being listed as an expert in the Rivera  
4 case has any relationship nor have I relied on it for  
5 the Rivera case.

6 Q. You were paid for work that you did for  
7 this company, either Philip Morris or Shook Hardy,  
8 prior to September of 2001, correct?  
9 A. Yes.

10 Q. Was the area of work that you were  
11 assigned prior to September of 2001 broader than the  
12 work that you've been assigned as an expert in the  
13 Rivera case?

14 MR. BOMAN: Again, I'm going to object on the  
15 grounds of privilege and confidentiality and instruct  
16 the witness not to answer.

17 MR. HOLMAN:

18 Q. Okay. Can you estimate how much money  
19 you've been paid by the tobacco -- for tobacco  
20 litigation -- well, strike that. I've asked that  
21 question. Have you -- this is your first deposition as  
22 I take it in the tobacco area, correct?

23 A. That's correct.

24 Q. The other five times you've testified,  
25 can you tell me what they were about?

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1 A. Yes. I've testified twice as a trademark  
2 expert, once in the mid '80s. My client was Cross  
3 Pens. Once, as I've listed in my vitae, the client was  
4 Nintendo.  
5 I've testified once as an expert in outdoor  
6 electrical hazards. In this case I worked for the

7 plaintiff's side. They were bringing a lawsuit arguing  
8 that someone who had come into contact with  
9 high-voltage electrical wires, the reason for that was  
10 the responsibility of the power company.

11 I've testified twice as a statistical expert  
12 in the composition of grand juries.

13 Q. Okay. There is a -- you rely almost  
14 exclusively on public opinion polls. Is that an  
15 accurate statement?

16 A. Yes, that's an accurate statement.

17 Q. Did you review any polls or any  
18 information that was accumulated and/or generated by  
19 the Federal Trade Commission?

20 A. No.

21 Q. Are you aware of any of the reports that  
22 the Federal Trade Commission generated that discussed  
23 the level of knowledge of the public regarding the  
24 risks of smoking?

25 A. No, I'm not.

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25

1 Q. Has anybody at Philip Morris or at Shook  
2 Hardy told you that they have other experts who discuss  
3 almost exclusively the Federal Trade Commission and  
4 actually report on surveys conducted and/or  
5 participated in by the Federal Trade Commission which  
6 discuss the level of knowledge of the populace in terms  
7 of the risks of smoking?

8 A. No, I have not.

9 Q. You would want to take into consideration

10 -- I mean do you understand who the -- obviously you  
11 know or are aware of who the Federal Trade Commission  
12 is?

13 A. Yes.

14 Q. And you would understand what their role  
15 would be in monitoring tobacco interests during the  
16 time that they were in existence, the Federal Trade  
17 Commission?

18 A. I don't know exactly what their role was  
19 in that context.

20 Q. Would it be important to you to  
21 understand what a federal agency such as the Federal  
22 Trade Commission thought say in the early '80s as to  
23 what the level of public knowledge was regarding the  
24 risks of smoking, or say in the late '60s and '70s?

25 MR. BOMAN: Objection to form.

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1 A. Can I answer?

2 MR. HOLMAN:

3 Q. Do you understand the question?

4 A. Yeah. I don't think it's particularly  
5 relevant to know what the Federal Trade Commission  
6 itself knew. I'm obviously interested in data. If  
7 there is more data, more data is always better than  
8 less data.

9 Q. And I guess it wasn't -- maybe let me  
10 rephrase my question. It wasn't so much what the  
11 Federal Trade Commission believed or didn't believe; it  
12 was what they understood the public to have believed in  
13 the '70s as to what the risks of smoking were. Would  
14 that be something that would be relevant for you to  
15 understand?

16 A. Yes. If there's more data to address the  
17 issue of the health hazards of smoking, yes, I would  
18 like to see it.

19 Q. Okay. Let me just ask you in general,  
20 your report which I've read and I'm not going to go  
21 paragraph by paragraph --

22 A. Thank you.

23 Q. Thank you -- talks a great deal about  
24 what the opinions were, what the level of knowledge  
25 might have been in the public regarding risks of  
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27

1 smoking.

2 It's accurate to state that I did not see a  
3 single reported item that discussed what the knowledge  
4 level was in the '60s, '70s, '80s, '90s, regarding  
5 whether smoking was addictive. Is that an accurate  
6 statement?

7 A. Yes. There is nothing in the report  
8 about smoking and addiction.

9 Q. Okay. So there's no way for you -- and

10 you do not intend to testify whether it was common  
11 knowledge or something less than common knowledge or --  
12 strike that. You do not intend to testify at all  
13 regarding the issue of whether the public understood at  
14 any point in time that smoking was addictive?

15 A. No, I do not.

16 Q. The -- you have copies, I would assume,  
17 of all of these public opinion polls that you are --  
18 all the different polls that you discuss in your  
19 reliance materials, correct?

20 A. Yes. Every poll that is in my report is  
21 included in my reliance file.

22 Q. Okay. Have you read the depositions of  
23 any of the plaintiff's experts?

24 A. Yes.

25 Q. Which ones? Or you listed them. Yeah.

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1 You read --

2 A. Go ahead.

3 Q. I'm sorry. I apologize. Go ahead.

4 A. I've read the report of Marvin Goldberg.

5 Q. Do you hold yourself out as a -- you're a  
6 political science professor. You certainly have --  
7 that's where your doctorate is. Your report's limited  
8 to public knowledge based upon the opinion polls. I  
9 don't mean to minimize it, but that's what you're  
10 talking about in terms of risks of cancer.

11 Mr. Goldberg discusses a great many other  
12 issues involving advertising, promotion, and the rest  
13 of it. You do not hold yourself out as an expert in  
14 those areas, advertising and promotion, correct?  
15 A. Right. As long as we're talking about  
16 product advertisement, you know, the Marlboro Man,  
17 cigarette advertising in general, Joe Camel, that sort  
18 of thing, I am not an expert.  
19 Q. Okay. Another area -- and I'm not again  
20 trying to limit in any way, sir, your expertise, but  
21 you do not have any expertise in say minors and how to  
22 market to minors, correct?  
23 A. That's correct.  
24 Q. In fact, you would not be discussing  
25 whether or not Philip Morris intended to target minors,  
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29  
1 would you?  
2 A. I will not.  
3 Q. Were you aware of the fact that Philip  
4 Morris has a significant number of documents where they  
5 actually track the trends of minors and whether minors  
6 smoke and why they smoke and how many of them smoke?  
7 MR. BOMAN: I'm going to object on the grounds  
8 of form.  
9 MR. HOLMAN: Go ahead.  
10 A. I know only as a consequence of general  
11 reading, that is of general reading, background reading

12 in preparation for the case.

13 Q. What background reading were you doing?

14 A. Richard Kluger's book, Ashes to Ashes. I  
15 think he may have mentioned that. But it would be not  
16 from any documents I received from the attorneys, but  
17 just general background reading.

18 Q. Yeah. Cigarette Wars, Ashes to Ashes --

19 A. Right.

20 Q. -- a number of those books discuss a lot  
21 of that. So that would be your kind of outside reading  
22 that you did probably on your own?

23 A. Yeah, that's correct.

24 Q. Did the attorneys suggest that you read  
25 those books?

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1 A. No. Actually I went to Amazon.com, typed  
2 in smoking, saw what they had, and bought it.

3 Q. Okay. So when we get to trial, I could  
4 actually ask you some questions on Ashes to Ashes?

5 A. The book is 800 and some pages long. I  
6 thought it was interesting, but I don't remember  
7 everything Mr. Kluger said.

8 Q. Well, maybe we'll get into it. It's kind  
9 of a fun book. Let me go and we're going to kind of  
10 skip through some things. Because again, like I said,  
11 I don't want to belabor things. I think your report's  
12 pretty straightforward. Whether I agree with it or not

13 is something else, but I understand what you're saying.  
14 Go to page 4, would you. You have up in table  
15 1 a question, "Have you read or heard anything recently  
16 that cigarette smoking" -- and the language that I want  
17 to look at is "may be a cause of cancer of the lung."  
18 Do you recall in that study or any of the studies that  
19 used the word may be, whether they define what that  
20 means?

21 A. I don't recall any definitions.

22 Q. So maybe could be as much as 1 percent or  
23 -- I mean as little as 1 percent or it's not defined in  
24 there, true?

25 MR. BOMAN: Objection. Form. Go ahead.

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1 A. It's not --

2 MR. HOLMAN:

3 Q. Let me rephrase it. May is not defined  
4 in the study, is it?

5 A. No, it is not defined in the study.

6 Q. Okay. There's no way for you to tell if  
7 the study was performed, whether it's '54 or '99, what  
8 may was intended to be in that poll, correct?

9 A. I don't know in the sense, but I don't  
10 what say George Gallup had in mind when he wrote the  
11 question in 1954.

12 Q. Okay. If a person responded in the '50s  
13 or '60s or '70s or '80s or '90s, whatever, to a

14 question that said, "Have you read or heard anything  
15 recently that cigarette smoking may be a cause of  
16 cancer of the lung?" you would have no idea what that  
17 meant to that individual, the word may, would you?

18 A. Not to any one specific individual, no.

19 Q. When you go to -- go to page 6, if you  
20 would. I just want to have you define in the last  
21 sentence of the last paragraph in paragraph 24, you  
22 used the word that smoking may be caused -- may be a  
23 cause of lung cancer, and the word is tended to believe  
24 that they had read or heard about the issue. What do  
25 you mean by tended?

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1 A. I mean a statistical tendency, that is a  
2 stochastic or probabilistic tendency as opposed to  
3 something that's deterministic. Something that's  
4 deterministic would simply mean every single person  
5 that knew X also said Y.

6 Q. Okay. So tended is something less than a  
7 certainty, correct?

8 A. Right.

9 MR. BOMAN: Objection to form. Sorry. Go  
10 ahead and answer.

11 A. It's a statistical probability.

12 Q. Okay. And when you say statistical  
13 probability, what do you mean?

14 A. I simply mean that again not every single

15 person that gave an answer, say answer X, also gave  
16 answer Y. There's a relationship, but the relationship  
17 isn't perfect. It's not 1.0.

18 Q. And can you define what the relationship  
19 would be in any of these particular studies?

20 A. Yes.

21 Q. In the one you're talking about here, can  
22 you define what that relationship is, even though it's  
23 something less than perfect?

24 A. I don't have and haven't looked at that  
25 particular data, but if the data is available, I can  
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1 certainly do a statistical analysis.

2 Q. Go to page 7, paragraph 26. You have,  
3 "Given that 90 percent of the population had heard or  
4 read recently that smoking may be a cause of lung  
5 cancer, one can reasonably infer that one topic of  
6 these conversations was the connection between  
7 cigarette smoking and lung cancer." Again, what do you  
8 mean by reasonably infer?

9 A. Simply my professional opinion, looking  
10 at public opinion data, that if 90 percent of the  
11 public had read or heard that smoking may be a cause of  
12 lung cancer and that 58 percent in 1964, 63 percent in  
13 '66 had discussed it frequently, occasionally, or  
14 seldom or, in the next line, that 80 percent had  
15 discussed it at least once or had discussed it ever in

16 their life, I think a reasonable inference is, since  
17 they've read or heard that smoking may be a cause of  
18 lung cancer, that this is one of the things that is  
19 discussed when people are discussing smoking and  
20 health.

21 Q. Okay. Go to page 10. I think this is  
22 evident from the way you've laid it out here, but I  
23 just want to make sure. You have table 7, "Is smoking  
24 one cause of lung cancer?" I take it the percentages  
25 are the affirmative answer to that question?

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1 A. That's correct.

2 Q. Can you go to 17 for me? You have -- on  
3 17 we start talking about age groups in terms of what  
4 knowledge or public knowledge might be in the opinion  
5 polls regarding cancer, correct?

6 A. That's correct.

7 Q. Okay. When you get over to page 19 and  
8 20, you actually start getting into polls that may  
9 cover those under the age of 18?

10 A. That's correct.

11 Q. Are you aware of any statistics -- and  
12 this let me just warn you I think is outside your field  
13 of expertise, but are you aware of any statistics from  
14 polls that you've looked at that discuss how many  
15 people who started smoking in their teens, say 13, 14,  
16 15, those age groups, are still smoking at the age of

17 40 or beyond?

18 A. I've probably run across that in my  
19 general background reading, but I couldn't give you a  
20 number.

21 Q. Okay. How many polls did you actually  
22 find that discussed knowledge of teenagers regarding  
23 risks of smoking?

24 A. There's the 1968 and '70 studies that  
25 were done by HEW, I presume they're done by the U.S.  
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1 Health Service. There also is the 1969 study that was  
2 done by the American Cancer Society.

3 Q. So those three studies are the only ones  
4 you were able to find?

5 A. Those are the only ones that were based  
6 on probability sampling.

7 Q. So there are other studies but not based  
8 upon probability sampling?

9 A. Certainly. I'm sure you're aware of the  
10 senior scholastic study. It's not a probability-based  
11 sampling study, but I know it's out there.

12 Q. Is there a reason why you didn't discuss  
13 that though?

14 A. The field work was done in 1959. Mrs.  
15 Rivera as my understanding started smoking in 1969.  
16 We've got very good quality probability-based selection  
17 samples for 1969.

18 I think that the samples of convenience are  
19 very useful and very helpful, but still I think that  
20 probability sampling studies are better. And since  
21 we've got them from 1968, 1969, and 1970, I thought  
22 that I would limit my report to those particular  
23 studies.

24 Q. Okay. Did you -- in that scholastic  
25 study were there significant differences in your  
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1 opinion between the findings, between those -- I'm  
2 sorry, go ahead.

3 A. No, as a matter of fact it seems to me  
4 that what you see in the senior scholastic study is  
5 very consistent with what you see in the probability  
6 studies done in '69 -- I'm sorry, '68, '69, and '70.

7 Q. Okay. I got way ahead of myself, but  
8 let me do a few things. What did you bring with you  
9 today?

10 A. I've got it on the floor here. Let me --  
11 this is it.

12 Q. And what is it?

13 A. Okay. This is my vitae. You've got a  
14 copy, so.

15 Q. Yeah. I want to mark some of these  
16 things though. If counsel has copies, you can keep  
17 your originals; that's fine with me. But why don't we  
18 mark as Exhibit 1 your CV.

19 A. Okay. Should I hand these to you, Mr.

20 Boman?

21 MR. HOLMAN: Maybe to speed this up, David, do  
22 you want to help out? You can be marking these as  
23 exhibit numbers, and that way I can keep the court  
24 reporter busy if you want.

25 MR. BOMAN: Do you want to -- I mean what he

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1 brought with him today, it was my understanding he was  
2 supposed to bring his Rivera file, and that is what he  
3 has brought with him today. Do you want to mark all of  
4 the individual components of that file?

5 MR. HOLMAN: There may be some things -- I  
6 guess I just don't know what he has there. There may  
7 be some things I don't care to mark at all.

8 MR. BOMAN: For example -- I'm sorry.

9 MR. HOLMAN: No, go ahead. That's good.

10 MR. BOMAN: For example, he's got a copy of  
11 some of the fact witness depositions. I don't know if  
12 you want to mark those or not.

13 MR. HOLMAN: I don't want to mark those at  
14 all. You can -- in fact, why don't you take any fact  
15 witness deposition you have and put it on the floor.

16 MR. BOMAN: And also Joe Rivera's deposition,  
17 which obviously was not a fact witness.

18 MR. HOLMAN: Yeah, we don't need his  
19 deposition.

20 A. Okay. Can I begin?

21 MR. BOMAN: That makes a short list. Do you  
22 want him to just go through it?

23 MR. HOLMAN: Sure.

24 Q. Let's do the CV as Exhibit 1, and then  
25 what do you have there, Doctor?

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1 A. This is the expert report of Joan Hoff,  
2 Ph.D.

3 Q. Okay. I don't need that marked. Go  
4 ahead.

5 A. This is the expert report of Marvin  
6 Goldberg.

7 Q. Did you make any kind of notes or  
8 anything on that?

9 A. I don't think so. I underlined a couple  
10 of things. Do you want me to go through and look for  
11 any handwritten notes?

12 Q. Why don't you go -- if you underlined  
13 something for reasons of -- I mean is that because you  
14 disagreed with it or agreed with it or what?

15 A. Good question. I mean it's been a couple  
16 of months ago. Mostly I just thought that they were  
17 points that when I went back to review the things so I  
18 didn't have to read it from scratch, these are the  
19 highlights that were relevant to what I was testifying  
20 to.

21 A lot of what Mr. Goldberg testifies to, no  
22 interest to me in the sense that I'm not an expert in  
23 his field. But there were a few things I thought that  
24 I wanted to note that he had mentioned and just go back  
25 quickly and look and see what they were.

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1 Q. Why don't you go through and just tell me  
2 -- in terms of those areas that you noted that you  
3 wanted to go back and look at, tell me the page number  
4 and kind of the paragraph and whether you agree or  
5 disagree with them or why you noted them.

6 A. Okay. On page 12 -- is that right --  
7 I've underlined line 13, "They will testify" -- I  
8 underlined 13. "They will testify -- they will further  
9 testify that Philip Morris was aware based upon  
10 internal documents of the risks of smoking including  
11 cancer." That was underlined.

12 Q. Is that something you're going to testify  
13 about?

14 A. I don't plan to.

15 Q. Okay.

16 A. I have handwritten here next on page 4,  
17 paragraph 9-7, it says, "Documents are in 1970s and  
18 1980s." That refers to paragraph 9-7.

19 Q. Okay. Does that mean anything to you  
20 sitting here today?

21 A. No. I'm just noting to myself that's

22 when the documents were labeled.

23 Q. Okay.

24 A. On page 5 I've underlined the first three  
25 paragraphs of -- first three lines of paragraph 9-11.  
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1 Q. For what reason?

2 A. I'll have to read it. It says, "The  
3 focus on high schools was still very much evident in  
4 1990 documents from two division managers of RJR.  
5 Division manager based in Oklahoma who wrote to his  
6 sales representatives."

7 Q. Okay.

8 A. And I don't know what other than it may  
9 have been news to me when I read it.

10 Q. Okay. Again, that's an area you're not  
11 discussing?

12 A. No, I'm not discussing. On paragraph  
13 10-1 I've underlined some material there. And I think  
14 it's -- and what I underlined that for is I've got  
15 here, "Note, old data set but cited." And I'm not sure  
16 what I did there, other than I'm noting this is an old  
17 data set.

18 Q. Okay.

19 A. And one of the reasons of course I'm  
20 interested in things in the '60s. I'm not so much  
21 interested in things in the 1990s.

22 Q. Okay.

23 A. I've got a note here and I'm not sure  
24 what it means. It just says, "Note stop difficulty."  
25 And that refers to paragraph 10-2.  
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1 Q. And 10-2 discusses what?

2 A. It's a failure to appreciate how  
3 difficult it is to stop smoking once someone has  
4 started.

5 Q. Okay. And again, addiction or stopping  
6 or starting smoking is something you're not  
7 addressing?

8 A. No, I'm not going to address that.

9 Q. Okay.

10 A. Table -- or paragraph 10-3, I've got  
11 brackets around it. And table 10-3 talks about  
12 adolescents seeing little risk currently in the fact  
13 that they're smoking and they underestimate the  
14 difficulties that are inherent in quitting smoking.

15 Q. Is that something again because it's  
16 quitting smoking and addiction that you're really not  
17 going to discuss?

18 A. No, I'm not going to discuss.

19 Q. Okay.

20 A. Paragraph 11-1 I note -- I underline here  
21 that -- and I've got hash marks next to it that Pamela  
22 Rivera started smoking in 1969 at the age of 12 or 13.  
23 And of course, that's relevant for what I will be

24 testifying about.

25 Q. Absolutely. Did you find that in her  
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1 deposition or the -- not her deposition, but her  
2 husband's deposition and friends?

3 A. Yeah, I think I first saw that in her  
4 husband's deposition.

5 Q. Okay.

6 A. I underlined the subparagraph on table  
7 11-2. It says, "The sheer amount of expenditures for  
8 advertising and promotion assures young people will be  
9 exposed to these messages on a massive scale."

10 Q. Do you agree with that? Not something  
11 you're going to talk about?

12 A. I'm not going to talk about that. I  
13 underlined the last sentence in paragraph 11-8, "Large  
14 promotional pushes by cigarette makers in the 1980s and  
15 '90s appear to be linked with increased levels of daily  
16 smoking." And again, I won't testify about that.

17 Q. Okay.

18 A. I also underlined parts of 11-9, and that  
19 refers to the promotional things that were available  
20 for people who smoked. Again, I won't testify about  
21 that.

22 Q. Okay.

23 A. Underlined parts of paragraph 13-2.

24 "This industry has employed a single strategy to defend

43  
1 and public opinion. It has always been a holding  
2 strategy consisting of doubt about the health charge  
3 without actually denying it." And I probably will  
4 testify at least about the public opinion aspect of  
5 that.

6 Q. Okay. Public opinion in terms of what  
7 the public believed based upon the polls is your  
8 opinion, right?

9 A. Right, right, that's correct.

10 Q. Let me just ask you one more question.

11 A. Sure.

12 Q. Because I think Mr. Goldberg, Marvin goes  
13 a great deal further in his opinions on that. Again,  
14 not to belabor it, but because we're not getting into  
15 internal documents with you, you don't know whether or  
16 not Philip Morris attempted to persuade or to confuse  
17 and/or misconstrue the information regarding the  
18 dangers of cigarette smoking as an internal matter; you  
19 just are looking at what the public may or may not have  
20 known based upon public opinion polls?

21 A. That's correct.

22 Q. Go ahead. I'm sorry.

23 A. Section 13-5, I've underlined the last  
24 sentence. And it says, "The document described in  
25 detail how extensive public relation efforts are to

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1 highlight information that questioned the link between  
2 tobacco and cancer and to dampen if not eliminate  
3 support for that link."

4 Q. Okay.

5 A. Again, I won't testify about internal  
6 documents.

7 And section 13-6, "1958 British American  
8 tobacco executives concluded that in a fact-finding  
9 trip interviewing over 36 scientist at 19 sites in U.S.  
10 and Canada, including two Philip Morris scientists by  
11 noting scientific opinion in the USA does not now  
12 seriously doubt that the statistical correlation  
13 between smoking and lung cancer is real and reflects of  
14 cause and effect." And again, I'm not going to testify  
15 about that.

16 Paragraph 13-8, there is a quote here. And  
17 the quote reads, "It has taken virtually until today  
18 for Philip Morris on its web site to acknowledge that,"  
19 and then it gives the Philip Morris acknowledgment.

20 And I won't read that. I'm sure you know what it is.

21 In section 13-9, Mr. Goldberg references a  
22 1970 Roper study funded by the Tobacco Institute. I've  
23 underlined that and in my notes I say, "Get that data,"  
24 which I have done.

25 Q. Okay. What did you think about the Roper

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1 study?

2 A. I thought it mostly supported the  
3 position that is outlined in my report. There are a  
4 lot of comments in that report saying gee, you know,  
5 the public is really aware of and concerned about the  
6 health hazards of smoking. And I thought that it was  
7 basically consistent with the sort of opinion that I'm  
8 going to give based on the report that you have.

9 Q. Do you have a -- did you list the Roper  
10 study in your -- I didn't see it but it might be there,  
11 in your reliance material?

12 A. No, I did not, because I didn't use  
13 anything from the Roper study in my report.

14 Q. Okay. But you have a copy of it?

15 A. I do.

16 Q. Okay. Can we mark as the next exhibit, I  
17 think it would be Exhibit 2 and maybe you can furnish a  
18 copy of your Roper study, but I would like it as part  
19 of your deposition so we could mark that as Exhibit 2.

20 A. Sure. Would you note that?

21 MR. BOMAN: I'm not sure we -- I don't think  
22 we have a copy of that in the room.

23 MR. HOLMAN: No, I understand the doctor will  
24 furnish a copy or we can provide it, you can provide it  
25 to the court reporter. But I want to see the actual  
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1 copy of the doctor's Roper study that he has.

2 MR. BOMAN: Oh, sure.

3 MR. HOLMAN: Thank you.

4 A. On page 14, paragraph 13-9, this is where

5 Marvin Goldberg discusses some information in that  
6 Roper report, and I've just basically underlined the  
7 stuff that he discusses here.

8 Q. That's fine. That's fine. Thanks.

9 A. And there's also -- Mr. Goldberg

10 references a study and I don't know how to pronounce

11 this person's name; it's I-Y-A-N-I-A-N McCleary, 1999.

12 In my notes I've got a note to myself saying, "Get this  
13 study," which I have done.

14 Q. Okay.

15 A. In table --

16 Q. Did you agree or disagree with the

17 conclusions of that study?

18 A. I'm not sure what the conclusions are, I

19 guess. I know that one conclusion was that 40 percent

20 or so of the public -- gee, I'm not sure I can

21 remember. 40 percent or so of the public that were

22 smokers thought they had an above average probability

23 of getting lung cancer. I just remember the study. I

24 didn't think about it hard enough to come to an opinion

25 as to whether I agree or disagree.

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1 Q. Okay.

2 A. Excuse me. In paragraph 14-1 I  
3 underlined the Goldberg and Hartwick 1990 study. And  
4 in my margins I have a comment, "Major error." And I  
5 think what I'm referring to here is his claim that the  
6 source credibility of a message is extremely important  
7 for the receptiveness of that message, for the  
8 persuasiveness of that message, for the credibility of  
9 that message.

10 And my conclusion was, well, gee, the tobacco  
11 companies have such a low level of favorability that  
12 their message really isn't going to be very conclusive  
13 or very persuasive. And when I say major error, I  
14 think that Mr. Goldberg has made an error in  
15 characterizing the message of the tobacco companies as  
16 being persuasive. My opinion is it's not persuasive.

17 Q. Mm-hmm. Well, are they telling the  
18 truth?

19 A. Well, about what, I guess?

20 Q. Let me be a little philosophical for a  
21 second. We'll kind of digress and then we'll get back  
22 to the report. You talk about public knowledge of the  
23 risks of smoking. Public knowledge goes to public in  
24 general, correct?

25 A. That's correct.

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1 Q. You would assume that employees,

2 officers, CEOs of the tobacco companies, Philip Morris,  
3 are part of the public, correct?

4 MR. BOMAN: Object to form.

5 A. They are --

6 MR. HOLMAN:

7 Q. Or do you --

8 A. They are certainly part of the public.

9 Q. So you would expect and to the extent  
10 you're going to say that the public had this knowledge,  
11 Pamela Rivera is part of the public, then obviously  
12 that knowledge was available and was aware -- the  
13 people at Philip Morris just on the opinion polls and  
14 things would have the same awareness, correct?

15 A. Well, I don't think I can really say that

16 in the sense that what I can't do is take a public  
17 opinion poll and look at -- for example, I saw this  
18 morning that 67 percent of the public approved of  
19 George W. Bush's handling of the Presidency. I can't  
20 use that poll and say that Mr. Holman also approves of  
21 Mr. Bush's handling of his job.

22 Q. You've got to remember I'm a plaintiff's  
23 attorney here.

24 A. I'm sure you probably don't.

25 Q. There may be some disagreement in this.

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1 A. But the point is, I can't say anything  
2 about an individual. I'm not an individual

3 psychologist. And the one thing you can't do is take a  
4 public opinion poll and then use that data and say  
5 something about a specific individual.

6 So I can't say anything about executives of  
7 the tobacco company as specific individuals. I can  
8 just say and draw conclusions about what the public is  
9 thinking.

10 Q. Okay. So you can do it in general, but  
11 you can't do it to a specific person?

12 A. Right, I can't talk about any specific  
13 person.

14 Q. Just like you can't talk about Pam  
15 Rivera, what she knew or didn't know?

16 A. No, I can't say anything about what  
17 Pamela Rivera did or did not know about the health  
18 hazards of smoking.

19 Q. Okay.

20 A. And let's see. On page 17, paragraph 16,  
21 I underlined the last sentence. "Each concluded that  
22 advertising plays a significant role in influencing  
23 youth to smoke." I will not testify on that.

24 Paragraph 17, last sentence. "When offered  
25 choices between food or candy and between two

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1 beverages" and so on, again, I won't testify on that.

2 Page 18, paragraph 18-1, all three studies,

3 "Those who earlier had great familiarity with or

4 appreciation of tobacco advertising and/or those who  
5 received or are willing to receive promotional  
6 materials," et cetera, et cetera, again, I won't  
7 testify on that.  
8 Paragraph 21-1, last sentence. I underlined,  
9 "Very young smokers choose Exhibit A" and so on.  
10 Again, I won't testify on that.  
11 Paragraph 21-3, "Tobacco firms have exploited  
12 adolescent vulnerabilities by creating advertising that  
13 skillfully associates positive images with tobacco  
14 products." Again, out of my field. I won't testify on  
15 that.  
16 Page 21, paragraph 22-2, "The advertiser  
17 creates an environment in which the idea can replicate  
18 or spread. It's a virus that does the work, not the  
19 marketer." Again, out of my field. I won't testify on  
20 that.  
21 "Smokers are highly -- are highly loyal to  
22 their brand." Again, I don't know if that's true or  
23 not. I just underlined it.  
24 And the final thing I think I underlined here  
25 is paragraph 23-2, which last sentence says, "Philip  
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1 Morris indicate concern that spending on cigarettes  
2 would shift to other products in the event of an  
3 increase in the price." Again, out of my field. I  
4 won't testify on that.

5 Q. Okay. And we don't need to mark that.  
6 Thank you, Doctor. What else did you bring with you?  
7 A. This is a disk. It contains the five  
8 studies that has individual level data on it that I  
9 analyzed in preparation for and in compiling my report.  
10 The five studies are the 1954 January Gallup study; the  
11 June 1st, 1954, Gallup study; the 1969, 1971, and 1972  
12 Gallup studies. And they're on this disk.  
13 Q. Can we make a -- is that our copy to  
14 mark?  
15 A. You may have it.  
16 Q. Okay. Let's mark that as the next  
17 exhibit number.  
18 A. This is a list of --  
19 MR. BOMAN: Can we take a break and let the  
20 court reporter get caught up on marking?  
21 MR. HOLMAN: Oh, sure. You want to take like  
22 five minutes and people can go to the restroom or  
23 whatever they want to do?  
24 MR. BOMAN: Just to make sure, the CV was 1 --  
25 MS. FOOS: I got a list here actually.  
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1 MR. BOMAN: -- and the disk is 3.  
2 (Exhibits 1 and 3 were marked for  
3 identification by the reporter).  
4 MR. HOLMAN: Okay.  
5 MR. BOMAN: Okay. Actually we're done if you

6 want to continue. I'm sorry.

7 MR. HOLMAN:

8 Q. Okay. Good. What is that last document  
9 you have there?

10 A. This is a list of every question that has  
11 the word "smoking" in it from the Roper Center  
12 database. I simply entered smoking and asked for every  
13 question in the database. There are a total of 946, I  
14 believe. This is a list of all 946.

15 MR. HOLMAN: Let's mark that as the next  
16 exhibit.  
17 (Exhibit 4 was marked for identification  
18 by the reporter).

19 MR. HOLMAN:

20 Q. And then did you bring personal -- do you  
21 have another pile of material there?

22 A. Right here, yes, I do.

23 Q. And what's that?

24 A. This is simply the code book for the 1954  
25 Gallup study. It lists how the questions were worded,  
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1 so when I do the analysis I can actually look at the  
2 questions and see what the exact wording was.

3 MR. HOLMAN: Okay. Let's mark that as the  
4 next exhibit.

5 (Exhibit 5 was marked for identification  
6 by the reporter).

7 A. This is -- I'm sorry, I'll take my time.  
8 This is essentially the same thing. This is the June  
9 1954 Gallup study. It's the code book. It gives you  
10 the exact questions so that I'll know what the  
11 questions are when I look at them.

12 MR. HOLMAN: Okay. And we'll mark that as --  
13 what exhibit would this be then?

14 THE REPORTER: Number 6.

15 MR. HOLMAN: Okay.

16 (Exhibit 6 was marked for identification  
17 by the reporter).

18 A. I think we can look at these -- or list  
19 these three together. They're the code books for the  
20 '69, '71, and '72 Gallup studies, again listing the  
21 exact questions.

22 MR. HOLMAN: That's perfect. We'll list that  
23 as -- we can do that as Exhibit 7.

24 (Exhibit 7 was marked for identification  
25 by the reporter).

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1 A. And this final bit of material is some  
2 technical information that I got from Gallup for  
3 putting together the 1954 January study. It's an old  
4 study and it was on multipunched hollerith cards. I  
5 didn't get it as a ready-to-go dataset; I actually had  
6 to work six or seven hours to get it to work. This is  
7 a set of instructions as to where everything is so that

8 I can do the technical work to analyze the study.  
9 MR. HOLMAN: Let's mark that as Exhibit 8  
10 then, I guess.  
11 (Exhibit 8 was marked for identification  
12 by the reporter).  
13 A. And that's everything.  
14 MR. HOLMAN:  
15 Q. Okay. Do you have a copy -- an extra  
16 copy, maybe David does, of your report?  
17 MS. FOOS: Yes.  
18 MR. BOMAN: Yes, we do.  
19 MR. HOLMAN: Let's mark that as Exhibit 9  
20 then. Okay.  
21 (Exhibit 9 was marked for identification  
22 by the reporter).  
23 MR. HOLMAN:  
24 Q. Let me ask you a number of different  
25 questions, and we're almost done. In your review of  
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1 polls, did you see any polls that discussed issues of  
2 whether there was common knowledge in the populace  
3 dealing with the idea of safer cigarettes, the low tar,  
4 low nicotine filtered type of cigarettes. Did you see  
5 any polls regarding what the public thought about  
6 those?  
7 A. I didn't see any in the public database,  
8 that is the data sets that are available to the public.

9 I requested a couple of internal tobacco company  
10 surveys from Mr. Boman, and I recall that issue being  
11 addressed.

12 I couldn't tell you what the results were, but  
13 my recollection is in some of these studies that were  
14 commissioned by the Tobacco Institute and done by the  
15 Roper Center, those issues were raised. But I don't  
16 either remember the question or what the frequency, the  
17 percentages were to the answers to those questions.

18 Q. And how many studies did you receive?

19 A. I think I got three is my recollection.

20 MR. HOLMAN: I'd like to mark as the -- are we  
21 up to Exhibit 9 now?

22 THE REPORTER: We're on number 10.

23 MR. HOLMAN:

24 Q. Okay. As Exhibit 10 would be the three  
25 studies you requested of David Boman from internal  
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1 documents of Philip Morris that involved Roper studies  
2 dealing with the concept of safer cigarettes, public  
3 knowledge about it, which include filters, low tar, low  
4 nicotine, and what the public conception was. That  
5 kind of capsulates what the three studies were about or  
6 what you asked for?

7 A. I don't really recall. I think the  
8 easiest way to handle it is just to give you the three  
9 studies. I don't know that all those topics were

10 addressed in all those studies. I just know that I've  
11 got the studies and I've paged through them, so I'll  
12 provide them to you and if they're there and you want  
13 to talk about them, obviously we'll talk about them.

14 Q. Okay. Did you ask Mr. Boman for any  
15 other kinds of studies or internal documents in the  
16 Rivera case relative to public opinion?

17 A. Yes, I asked him for the American Cancer  
18 Society study. I asked him for the U.S. Public Health  
19 Service youth studies in '68 and '70. I asked him for  
20 the 1964, 1966, and 1970 U.S. Public Health Service  
21 national public opinion polls related to smoking and  
22 health hazards, lifestyles, what have you.

23 Q. Okay. So I have one, two, three, four,  
24 five, maybe potentially six or seven more studies?

25 A. I think five, I think there were -- let's  
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1 see -- six probably. There were the three public  
2 health --

3 Q. Numeric --

4 A. -- service studies.

5 Q. Go ahead.

6 A. There was the 1968, 1970 youth studies  
7 and the American Cancer Society study. Again, I had  
8 seen those referenced in the material that I reviewed,  
9 and I thought it was easier for him to provide it than  
10 for me to try to track it down.

11 Q. I would like to mark those as the next  
12 exhibit. You can put all those together. Again,  
13 Doctor, if you would provide those.  
14 And what I'm looking for are the actual ones  
15 that they provided you so that you should be giving  
16 them copies of this. We can make that the next exhibit  
17 number. Would that be all the studies then that they  
18 have provided you, all the different documents you have  
19 requested of them?

20 A. That's all I can recall.

21 Q. Okay. What I want to ask you is just  
22 kind of one more area. You have a study, the Lieberman  
23 Research done by Lieberman.

24 A. Could you reference a paragraph for me,  
25 please?

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1 Q. Why don't you go to page 19, paragraph  
2 60.

3 A. Right.

4 MR. BOMAN: Before we --

5 MR. HOLMAN:

6 Q. Do you want to read that to me?

7 MR. BOMAN: I'm sorry. Before we move on,  
8 just something occurred to me. I mean I think that --  
9 I just want to make sure that the latter group of  
10 studies that Dr. Tedin referred to, I think they were  
11 characterized as like internal to the company, internal

12 to the defendant, and they are not.

13 MR. HOLMAN: I didn't -- yeah, I didn't --

14 these are public domain studies, it sounded like to

15 me.

16 MR. BOMAN: Exactly.

17 MR. HOLMAN: Public health, American Cancer  
18 Society, those types of things. I didn't mean to  
19 suggest that they were internal studies.

20 Q. I think the exhibit before the Roper  
21 studies that were done internally by Philip Morris were  
22 -- it doesn't sound -- and correct me if I'm wrong,  
23 Doctor, this last exhibit that had these five or six  
24 different studies, those are all public type studies,  
25 correct?

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1 A. Right. They're available from the  
2 government. But I knew that the lawyers had them, so  
3 easier to --

4 Q. Right.

5 A. -- request them from the lawyers than  
6 from my getting them from the government is a long  
7 process.

8 Q. Yeah.

9 MR. BOMAN: I just wanted to make sure that  
10 you didn't think you were getting something other than  
11 what you were getting.

12 MR. HOLMAN: No, I appreciate that, and I

13 didn't. The only thing -- I think that's enough.

14 Q. But anyway, getting to this study done on  
15 teenager looks at cigarette smoking, can you just  
16 describe that study for me?

17 A. It is a study that was conducted I  
18 believe by Lieberman Research of New York. It's got a  
19 total sample size of 1500. The respondents are  
20 teenagers between 13 to 18 years old, and they use  
21 probability sampling. That is, they use the  
22 conventional sort of stuff that Gallup did and they  
23 limited their sample to the standard metropolitan  
24 statistical areas.

25 And according to the introduction, it provides  
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1 a representation of different demographic regions and  
2 different size communities in proportion to their  
3 occurrence in the population.

4 Q. Okay. Do you remember reading -- did you  
5 read the whole study?

6 A. Yes, I did.

7 Q. So you would have read the questions that  
8 were asked?

9 A. I would have, yes.

10 Q. Can you tell me what the histories -- I  
11 mean how were some of the questions phrased in terms of  
12 known risks of cancer from smoking, or do you remember  
13 in general?

14 A. I can use the ones that appear in my  
15 report. Off the top of my head I can't recall. There  
16 were lots of questions in there.

17 But I think that question 61 indicates that  
18 one question that was asked here was, "There is a  
19 warning label on the side of packs of cigarettes saying  
20 caution, cigarette smoking may be hazardous to your  
21 health. Have you ever seen it?" And 95 percent of the  
22 teenagers said yes, they had in fact seen it.

23 Q. Okay. Is this -- I'm sorry. Is this a  
24 study that sets forth statements and then asks specific  
25 questions about statements?

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1 A. That's one tactic it does. It also sets  
2 -- it also asks specific questions, gives people  
3 options. For example, you see an example of this on  
4 table 16. This is a question in which it's not a  
5 statement where people agree and disagree but actually  
6 gives options.

7 "Some people think smoking is one of the  
8 causes of lung cancer. Others think the relationship  
9 is yet to be established. What do you think?" So this  
10 is not an agree/disagree question where someone has  
11 read a statement, but they're actually given real  
12 choices. And you see here that 80 percent say that  
13 smoking causes cancer.

14 Q. In some of the questions that were

15 referencing statements that were made, do you remember  
16 any of the statements, what the risks were, how they  
17 kind of phrased them?

18 A. I think I've got some in the report. If  
19 you'll give me a second or two to page through here,  
20 I'll try to find them.

21 Yes, I think that table 17 and table 18 are  
22 statements that were taken from that 1969 American  
23 Cancer Society report. So these are in fact  
24 statements, and you can agree -- in these cases you can  
25 say they are true or they're false, which in essence is

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1 similar but not exactly the same as an agree/disagree  
2 statement. And table 17 and table 18 are taken from  
3 the 1969 study of youth regarding their outlooks on  
4 cigarette smoking.

5 Q. Okay. And I guess when you get into  
6 table 18 it's kind of what I -- where I was heading.  
7 Other than this study -- well, strike that. Clearly  
8 you recognize that if you talk to somebody and you say,  
9 "Do you understand that there may be a risk of getting  
10 cancer associated to smoking?" you're going to get a  
11 certain number.

12 But if you ask a question such as you have  
13 down in table 18, "Do you have to be a smoker for many  
14 years before your health is affected?" you're going to  
15 get a different type of number, correct?

16 MR. BOMAN: Object to form.

17 A. Yeah, that's correct. Question wording  
18 will influence distributions that you get in response  
19 to a question. One reason why you shouldn't rely ever  
20 on a single question.

21 MR. HOLMAN:

22 Q. Right. So when you get into actually --  
23 and then I'm looking, "After smoking just a short  
24 period of time your health is affected," 55 say true,  
25 25 say false, and 21 aren't sure.

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1 Then you have, "Have you ever -- you have to  
2 be a smoker for many years before your health is  
3 affected" and then you have trues 44, falses 41, so  
4 you're seeing greatly different numbers compared to may  
5 there be a risk associated with it, correct?

6 MR. BOMAN: Object to form.

7 A. Yeah, these are different sorts of  
8 questions. And again, as I note in paragraph 67, I  
9 don't think these are very good questions in the sense  
10 they've got a lot of ambiguity to them. They suffer  
11 from response set, meaning the tendency to agree or say  
12 true to anything that sort of sounds plausible.

13 I think -- I included them simply because I  
14 think that it's important not to appear to be cherry  
15 picking and only picking the single best questions that  
16 would support the opinion that I'm giving.

17 But as you note in paragraph 67, I think  
18 there's some real problems with these questions, but I  
19 present them because they're there and I think in the  
20 interest of being fair, I ought to include them in my  
21 report.

22 MR. HOLMAN:

23 Q. Well, and you say one of the problems is  
24 is many years is undefined. Well, it's undefined as  
25 may cause cancer, right?

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1 A. Well, I think you've got to look at, what  
2 is the reality out there? There's a reality out there  
3 and then there's a question that taps the reality.  
4 In my opinion it would not have made any  
5 difference in 1954 if you had used the word may or if  
6 you had used the word is one of, simply because the  
7 debate out there was the public health community saying  
8 that it is one of the causes of cancer, and the tobacco  
9 industry is saying that the proof yet -- has yet to be  
10 shown.

11 So I think that you can phrase the question in  
12 a particular way and why George Gallup chose to phrase  
13 it that way, I don't know. But my opinion is that if  
14 you use is instead of may, you would have had  
15 essentially the same result.

16 Q. But my question is different, and let me  
17 -- let me kind of step back from the actual poll.

18 One of the problems, as I see it, is that kids  
19 smoke for different reasons. They may or may not  
20 understand that there are risks, but certainly the  
21 lines of questions that you have in the Lieberman  
22 study, or done by the Lieberman Research Group, is that  
23 there is this concept of some kind of time frame  
24 associated with whether these risks are going to be  
25 developing or not.

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1 So if you smoke for a short period of time as  
2 opposed to a longer period of time, your risks may be  
3 different. Is that a reasonable understanding of  
4 common knowledge based upon that study without saying  
5 too much more about it?

6 MR. BOMAN: Object to form. You can answer.

7 A. Well, I think that if you look at a  
8 different way of phrasing it, that is a much tougher  
9 and more realistic way of phrasing it where people are  
10 read a statement but instead of having to agree with it  
11 -- which is so easy to do.

12 I mean only one side of a public opinion  
13 question is presented when you read a statement. It's  
14 much more meaningful if the one side is presented and  
15 people go out and actively disagree with that. And I  
16 think we see that, particularly in the American Cancer  
17 Society study, and there are a couple of examples of  
18 that.

19 MR. HOLMAN:

20 Q. Doctor, I don't mean to argue with you or  
21 fight over this issue. My question is really simple.

22 A. Okay.

23 Q. Would you agree that, at least based upon  
24 the study done by the Lieberman Research Group that  
25 you've quoted at page 19 and 20, that when you get into  
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1 the length of time of smoking, you're going to get  
2 different responses?

3 So that you could make a conclusion, at least  
4 in general, that the public knowledge was that if you  
5 smoked for a short period of time, your risks may be  
6 one thing; if you smoked for longer, it may be greater.

7 Would you agree with that?

8 A. I would have to actually look at the  
9 items specifically. Let's look at table 18. The first  
10 item here shows and says, "Smoking just a few  
11 cigarettes a day probably doesn't affect your health."  
12 There's a tendency to agree with that because only one  
13 side of the statement is presented. But still, 60  
14 percent, 59 percent reject that statement.

15 On the other hand, "After smoking just a short  
16 period of time your health is affected -- after smoking  
17 just a short period of time your health is affected,"  
18 55 percent agree with that.

19 "You have to be a smoker for many years before

20 your health is affected," 44 percent say it's a true --  
21 it's true, I'm sorry, they agree. 41 percent say it is  
22 false. I mean that splits about 50/50. But you know,  
23 I don't even know if that question is -- that  
24 particular statement is true. I think there's a good  
25 deal of controversy over it, but --

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1 Q. Is there any study that you're aware of  
2 that asks appropriate questions that defined for a  
3 teenager whether he should be concerned about smoking  
4 for a short period of time or for a longer period of  
5 time? Or is this the only study that really does that?

6 A. Well, these are the only two good quality  
7 probability-based samples of which I'm aware. And the  
8 questions are in here, and I think the questions show  
9 for the most part that teenagers are very much aware  
10 that smoking is a health hazard.

11 I would have to look. Again, I can't recall  
12 from my memory what items that address the issue of  
13 smoking over a short period of time versus a much  
14 longer time, how much of a consequence that is for  
15 one's personal health.

16 But it's quite clear from the American Cancer  
17 Society study that American teenagers really know that  
18 smoking is a cause of cancer. And how long you have to  
19 smoke before it becomes dangerous, tougher question to  
20 get at, and maybe that particular issue can't be

21 answered with survey data.

22 Q. But isn't the real key, and it's an area  
23 that you don't even cover, is that the longer you  
24 smoke, the more likely you are to be addicted to it,  
25 the harder it's going to be to quit, and the more  
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1 likely that when you're 20, 30, and 40 you're still  
2 going to be smoking and eventually die of cancer?  
3 Isn't that the key and isn't that the problem with  
4 looking at these studies, they don't address what  
5 common knowledge was regarding addiction?

6 MR. BOMAN: Object to form.

7 MR. HOLMAN:

8 Q. And you're not going to even talk about  
9 it?

10 A. Right. I don't know of any good quality  
11 data on addiction. Maybe, you know, it's not a field  
12 that I'm going to address. What I'm going to address  
13 is what do people know. And people in my opinion know  
14 that smoking is a cause of cancer.

15 Q. Right.

16 A. And other health maladies.

17 Q. 80 to 90 percent of them, according to  
18 your report, knew that it may cause cancer. Somewhere,  
19 a split, length of time may have an affect, and it  
20 could be 44 to 41 percent or whatever it is, so length  
21 of time is clearly a consideration in knowledge or lack

22 of knowledge about whether smoking is a risk factor or  
23 not, is it not?

24 MR. BOMAN: I'm going to object on the grounds  
25 that mischaracterizes his prior testimony.

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1 A. Well, my answer to that I think --

2 MR. HOLMAN:

3 Q. Let me rephrase the question. The reason  
4 you get a difference -- let's just look at table 18 and  
5 the final comment there. "You have to be a smoker for  
6 many years before your health is affected," okay. And  
7 let's compare that to table 16, "Smoking causes  
8 cancer."

9 A. Mm-hmm.

10 Q. So 80 percent of them say smoking causes  
11 cancer. 44 percent of them, or 41 -- I guess 44  
12 percent of them say you may have to be a smoker many  
13 years before your health is affected. What do you  
14 attribute the difference of almost half that figure to  
15 be?

16 A. Because I think the question here is very  
17 demanding of knowledge, that the question "You have to  
18 be a smoker for many years before your health is  
19 affected" somehow assumes that people have gone to the  
20 trouble of finding out a whole lot of very detailed  
21 knowledge about smoking and health.

22 And my understanding is that in the 1960s

23 anyway and even today it's really not known if you have  
24 to be a smoker many years before your health is  
25 affected.

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1 I doubt that information was well known in the  
2 1960s, but even if it was, it placed tremendous demands  
3 on people that simply aren't part of human nature.

4 People don't go out and secure that level of detailed  
5 information about any subject, be it smoking and its  
6 consequences for health, be it the safety or lack of  
7 safety, the hazards you face if you don't wear seat  
8 belts or the hazards of eating too much red meat.

9 It simply makes an assumption on the part of  
10 the person looking at that question that, gee, people  
11 are spending a whole lot of time educating themselves  
12 about medical issues when in fact people don't have  
13 detailed information about much of anything.

14 Q. Well, the difference between the not sure  
15 and the relationship hasn't been established or do not  
16 know or not applicable is almost identical, 15 percent,  
17 13 percent, or 20 percent for table 16 and 15 percent  
18 for table 18.

19 So it's not as if -- what this study is saying  
20 is not that they don't know. They're not saying,  
21 "That's too much information for you to expect me to  
22 understand." They're saying, well, I agree with it 44  
23 percent. I disagree with it 41 percent. But clearly

24 length of time of smoking is something that the public  
25 in general has an understanding about. Otherwise you  
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1 would see a big difference between that and table 16.

2 MR. BOMAN: Object to form and also object on  
3 the grounds --

4 MR. HOLMAN:

5 Q. Right?

6 MR. BOMAN: Excuse me. Object to form and  
7 also object on the grounds asked and answered.

8 MR. HOLMAN:

9 Q. Isn't that correct?

10 A. I think I'll have to ask you to restate  
11 the question.

12 Q. You said that --

13 A. Could you give me about a two-minute  
14 break here? I would just like to take a throat lozenge  
15 here.

16 Q. Yeah, go ahead.

17 MR. BOMAN: Do you need some more water?

18 A. No. Okay. Go ahead.

19 MR. HOLMAN:

20 Q. Okay. Your point was -- well, all I'm  
21 looking for in this study is the distinction between  
22 knowledge in general that if you smoke, that may be a  
23 risk. As opposed to how long do you have to smoke  
24 before it becomes a risk. And those are the two

25 issues.

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1 Your point was, to ask a person in the '60s or  
2 '70s or even maybe now how long you have to smoke  
3 before it becomes a risk is to demand too much  
4 knowledge from them. My point to that is that their  
5 answer to table 18, the third question, would then have  
6 a higher I'm not sure or not applicable or whatever  
7 compared to table 16 where smoking causes cancer, the  
8 relationship hasn't been established 13 percent, or not  
9 known or not applicable 7 percent.

10 I mean that uncertainty isn't there. That's  
11 almost the same in each answer. So the difference is  
12 is that people think in fact that you have to smoke for  
13 a period of time before it becomes a problem. Isn't  
14 that true if you look at the study results, whether you  
15 agree with how the questions were asked or not?

16 MR. BOMAN: Object to form and also asked and  
17 answered.

18 A. Just let me note first that when you ask  
19 a particular question, people think that you're asking  
20 a question because there's a reasonable answer to be  
21 given. So they tend to give an answer, okay.

22 MR. HOLMAN:

23 Q. Yeah, answer my question though.

24 A. Well, the data I think speak for itself.

25 First, there is some acquiescence bias in this and the

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1 tendency of people to say yeah, that sounds reasonable,  
2 yes, it's probably true.

3 But the particular question, you have to be a  
4 smoker many years before your health is affected, like  
5 I said, I don't think people can really know if that is  
6 the case or not. They may answer the question --

7 Q. Why did they answer the question then yes  
8 or no?

9 A. Because the question was --

10 MR. BOMAN: Object to form. Go ahead.

11 A. Because the question was asked. People  
12 think if you ask me the question, it's reasonable for  
13 me to answer it. And I think this is the best answer  
14 people could give based on the information available.  
15 But there isn't information available on that topic.

16 Q. Well, how do you know that?

17 A. This is a set of their best -- their best  
18 -- I wouldn't say guess, but based on the information  
19 that is out there, this is probably the best  
20 conclusion, the best answer they can come up with.

21 Q. Sure, but how do you know, how do you  
22 make the statement that that information wasn't out  
23 there or available to them? How do you know that?

24 What is the basis for that opinion?

25 A. Because I know generally the level of

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1 information that the American public holds. That's one  
2 of the areas I've done a lot of research in. I know  
3 that on virtually no topic does the American public  
4 have detailed information, whether it's health, whether  
5 it's politics, whether it's professional sports.

6 American public simply doesn't have detailed  
7 information on anything. They have enough information  
8 I think to make rational decisions, but they don't have  
9 detailed information.

10 Q. Other than that general assumption,  
11 Doctor, what's the specific information you have to  
12 believe that when this study was done in this age group  
13 that that information had not been made available in  
14 some source or to some extent to them?

15 MR. BOMAN: I'm going to object. Form.

16 Question.

17 A. I don't know what information was made  
18 available to them, but I know that type of information  
19 across a wide variety of subjects is more detailed and  
20 more demanding of people than people are able to hold  
21 in short-term memory and be able to recall when they're  
22 asked about it in a survey context.

23 Q. This is the best study and the best  
24 information we have available to us at this time as to  
25 what teenagers thought at this time frame, correct?

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1 A. Right. I think the American Cancer  
2 Society study is the best study available for 1968,  
3 1969, 1970.  
4 Q. In terms of this age group, Doctor?  
5 A. Right, in terms of the 13 to 18 year  
6 olds.  
7 Q. Okay. Did you ever find a study that --  
8 you know, you've got these tables. And you combine --  
9 look at page 23 -- or paragraph 84. And you're talking  
10 about table 19.  
11 A. Correct.  
12 Q. Did you -- I don't understand that. Is  
13 that -- how did you put that table together? Is that  
14 based upon information from all those different years,  
15 that's an average, or what is this?  
16 A. Right. It's based on every single year.  
17 That is, I looked at the Roper Center database and I  
18 pulled out all the questions that asked about, "Do you  
19 have a favorable opinion of a particular industry,  
20 unfavorable opinion of a particular industry." I  
21 whittled it down so the questions were phrased in the  
22 same fashion so that there wasn't the problem with lack  
23 of question comparability.  
24 And this is from all those years. It could be  
25 as many as four or five or six questions averaged if  
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1 there are four or five or six questions available for  
2 that particular point. If there's only one question,  
3 then it's only one question. And again, all that data  
4 is available in my reliance file.

5 Q. Did you actually -- do you have the  
6 calculations that you did?

7 A. Yes.

8 Q. So you have actual pages or a program or  
9 something where you compiled all this data?

10 A. I think I sat down by hand and just added  
11 it up on a calculator is my recollection.

12 Q. Okay. Do you have any kind of paperwork  
13 that shows that?

14 A. No. I just punched the numbers in and  
15 got the average and I wrote it down and included it in  
16 my report.

17 Q. Do you have a Roper study or some other  
18 document that shows the favorability rating for Philip  
19 Morris in 1968?

20 A. I don't believe so. I don't recall,  
21 anyway.

22 Q. What about for 1969?

23 A. Let's look at -- I believe the only one  
24 that was available in the Roper Center database was  
25 from 1980. In fact, I'm sure it was. I think that's  
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1 the only favorability -- not favorable question that

2 was in the Roper database, and that year was 1980 that  
3 it was available.

4 Q. And that's figure 4?

5 A. Right, that's figure 4.

6 Q. So you have no way of telling us -- well,  
7 isn't it -- how unfair is it, Doctor, for you to do  
8 table 19, which is an average of over 84 from '69 to  
9 2001, and based upon one favorability rating in 1980  
10 put Philip Morris down as the lowest company?

11 MR. BOMAN: Object to the form of the

12 question.

13 MR. HOLMAN:

14 Q. Yeah, let me rephrase it. I mean tell me  
15 about your thinking on that, Doctor. Clearly how  
16 reasonable -- well, strike that. Let me just -- let me  
17 ask you some foundation questions. I'll leave the  
18 argument for later. Figure 4 has Philip Morris, which  
19 is the favorability rating for 1980, correct?

20 A. That's correct. And just to make sure

21 we're on the same page here, I mean all of these  
22 companies were asked about in the same survey. This is  
23 not a number of surveys. It's the same survey.

24 Q. No, I understand that.

25 A. Okay.

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1 Q. And that's the only favorability figure  
2 you have for Philip Morris?

3 A. That's the only one that I was able to  
4 find in publicly available sources.

5 Q. But in table 19 you put Philip Morris  
6 down as an average of over all those years based upon  
7 paragraph 84, '69 to 2001, and yet that's only a rating  
8 from 1980?

9 A. That's correct. And I make that clear in  
10 my report. I'm not misleading anybody. I make it very  
11 clear that what I took was what's available. I didn't  
12 engage in any sort of cherry picking. I just said  
13 what's available and I took what was available.

14 Q. Well, where do you state that you only  
15 have one number for Philip Morris?

16 A. I said that I took them based on what was  
17 available. And I don't think I said I only have one  
18 data point for Philip Morris.

19 Q. But isn't it misleading to the extent  
20 that you only have -- I mean you don't have anything  
21 from the '60s or 70s. Clearly by the '80s or '90s  
22 maybe things are becoming worse for Philip Morris, but  
23 -- well, never mind. So you only have one data for  
24 Philip Morris?

25 A. I'm not trying to mislead anybody. And  
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1 like I said, the materials in my reliance report and  
2 like I said, I'm not cherry picking because I simply  
3 said what's there. And I picked what was there and I

4 made these computations. But you're right, Philip  
5 Morris is one data point.

6 Q. Now look at figure 2. I just want to get  
7 this correct before we go on. This is just one point  
8 in time, scientists is the one I'm looking at. This is  
9 for 1964, correct?

10 A. That's correct. It's the same survey,  
11 one point in time.

12 Q. Okay. Now did you look at scientists as  
13 a general category, for instance like in table 19 you  
14 have that '69 to -- yeah, the '90s. Is there some  
15 other table that you have where you look at scientists  
16 over a long period of time or did you study them for  
17 over a long period of time to see if they had a high  
18 favorability rating?

19 A. Let's look at figure 1. And you can see  
20 here in figure 1 that the question on scientists was  
21 first asked I think in 1973, and I present data from  
22 1973 through 2000.

23 Q. Okay. My copy's obviously black and  
24 white.

25 A. So is mine.

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1 Q. You're going to have to help me out a  
2 little bit.

3 A. Okay.

4 Q. I can't really tell the difference.

5 Would the -- would the last line then be the  
6 favorability --  
7 A. Right.  
8 Q. -- for science?  
9 A. And let me go through to make sure we're  
10 on the same page here. The question was not asked in  
11 1967, '72, so it's not there. 1973, 1979, 44 percent  
12 had a favorable opinion of science. 1980 to '85, 45  
13 had a favorable opinion or favorable view of science.  
14 And in 1986 to 2000 it was 43 percent.

15 So as you can see, there's a slight decline.  
16 But for the period of 1979 to 2000 there isn't a  
17 terrific difference in the way scientists are being  
18 evaluated.

19 Q. So in that '67 to '72 there is no  
20 category for science there?

21 A. Right. The question wasn't asked.

22 Q. Okay. But we know -- we know in '64 from  
23 table 2 that scientists were -- had a favorability or  
24 an ethical moral practice of industry in '64. This is  
25 on figure 2. They had a 69 percent rating, correct?

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1 A. Right. It's a different question. I  
2 can't put those questions together because they ask  
3 about a different subject.

4 Q. Well, see, I'm an attorney, so broadly I  
5 got to do that. But you don't think that I can do

6 that, huh?

7 A. Well, it's not good practice in terms of  
8 public opinion research.

9 Q. Okay. I won't do that. But scientists  
10 clearly have one of the leading -- in terms of these  
11 four areas, executive, business, medicine, and science,  
12 science is pretty much at the top of those different  
13 areas, correct?

14 A. That's correct.

15 Q. Now executive branch, I take it that's  
16 the president, that's not the other governmental  
17 agencies?

18 A. Yeah, the exact question says the word  
19 executive branch.

20 Q. Did you ever look at any of the CTR or  
21 TIRC press releases?

22 A. No.

23 Q. Okay. But would you be surprised --  
24 strike that. Were you aware that in these press  
25 releases that -- well, you know what CTR is, correct?

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1 A. No, please tell me. Oh, the -- yeah,  
2 please tell me. I think I do, but please tell me.

3 Q. The Council for Tobacco Research, the  
4 entity that was formed by the tobacco companies to look  
5 into issues regarding smoking and cancer, for whatever  
6 reasons they formed them?

7 A. Yeah, I recall a reference to them.

8 Q. There are allegations that it was simply  
9 a front to confuse the public as to what the real  
10 dangers of smoking were. And I'll leave that as a  
11 statement, not a question.

12 The -- would it surprise you that CTR in many  
13 of their statements said that, "We have sent out  
14 studies to the best scientists in the world to study  
15 these issues," and then later on CTR would make the  
16 statement that, "It is still not proven that smoking  
17 causes cancer"?

18 MR. BOMAN: Object --

19 MR. HOLMAN:

20 Q. As a political science expert or expert  
21 in the area of political science polling, is that one  
22 way for the CTR to attempt to affect opinion, public  
23 opinion as to the dangers of smoking if they lead with  
24 somebody that has a favorable rating?

25 MR. BOMAN: I'm going to object to the form of  
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1 the question. Go ahead and answer if you can.

2 A. Are you asking me about the motives of  
3 the organization? I don't know that, of course.

4 MR. HOLMAN:

5 Q. Yeah, I'm not asking you about the  
6 motives. That was kind of a lead-in. Let me ask you  
7 to assume that the CTR in many of their press releases

8 talked about the scientific endeavors and studies they  
9 were doing --

10 A. Mm-hmm.

11 Q. -- followed up with comments of the CTR  
12 that said that it's still not proven that smoking  
13 causes cancer. Is it -- do you have an opinion that if  
14 you lead in -- assume that's true.

15 A. Mm-hmm.

16 Q. So you don't have to accept that as true  
17 or not and I'm not asking you whether they did that or  
18 not. But assume that's true. Is leading in with  
19 scientists who are, according to this, higher up in  
20 these four categories or the highest of these four  
21 categories in terms of favorability ratings, is that  
22 one way that could affect public opinion because people  
23 look at scientists as being believable and if  
24 scientists are doing this and CTR says it's still not  
25 proven, is that a way to affect public opinion

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1 regarding the dangers of smoking?

2 MR. BOMAN: Object to form.

3 A. Yeah. I think that to the extent that  
4 this information is identified as coming from the  
5 tobacco companies or one of their trade groups or one  
6 of their research organizations, it's simply not going  
7 to be credible even if they use the word scientists.  
8 I mean if they did something where they got

9 very, very reputable scientists to come out and make a  
10 statement and it appeared that there was nothing  
11 whatsoever involved or connected to the tobacco  
12 companies, maybe yes.

13 But if we're talking about a statement that is  
14 made and identified as being associated with a tobacco  
15 related trade group or research organization, I don't  
16 think those sorts of things move public opinion.

17 MR. HOLMAN:

18 Q. Would it move public opinion in your  
19 mind, Doctor, that if the tobacco company or CTR came  
20 out and said, "You know, we agree, smoking causes  
21 cancer," would that affect public opinion in your mind  
22 in 1969, Doctor?

23 MR. BOMAN: I'm going to object to form.

24 A. It's hard to know, obviously, because  
25 that's a hypothetical question and you can't rerun  
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1 history and have real hard data to be able to examine  
2 and come to a conclusion.

3 But my answer is that would fundamentally I  
4 think be redundant. That is there is such a cacophony  
5 of sources out there saying that smoking is a health  
6 hazard or cause of cancer. To add one more to that I  
7 don't think would make any difference.

8 And I think that's pretty obvious. When you  
9 look at the upward trend of the line indicating that

10 people think smoking is one cause of lung cancer or  
11 people think that smoking is a health hazard. That  
12 line is about as steeply going up as any long-term  
13 trend in public opinion data over a similar time period  
14 I've ever seen.

15 So I think to add yet one more voice to that,  
16 I think that line is moving upward about as fast as a  
17 line can move. One more voice added to it I don't  
18 think will make any difference.

19 MR. HOLMAN:

20 Q. So even if that voice is the culprit that  
21 produces the cigarette that addicts the small kids that  
22 gets them to smoke in their teenager years because  
23 they're targeted, who then because they're addicted  
24 continue to smoke into their 40s and die like Pamela  
25 Rivera did of lung cancer when she was 42, even if that

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1 company who has low credibility came out and said, "You  
2 know, by God, you're right, smoking causes cancer; you  
3 better not smoke," you don't think that would make one  
4 bit of difference to the public in terms of their  
5 knowledge of the risks of smoking?

6 MR. BOMAN: Object to form.

7 A. Given the low credibility of the tobacco  
8 companies, I think people would look at it cynically.  
9 What are they up to now? They're in business to make  
10 money. Why are they telling us? How will this turn a

11 dollar for them?  
12 I think their credibility as a source of  
13 information on health and smoking is so low that if  
14 they were to make that sort of statement, I think that  
15 people aren't going to suddenly go, "Gee, this awful  
16 company has all of a sudden become altruistic. They're  
17 more interested in public health than their  
18 shareholders and employees and making money." My  
19 answer is no, I don't think it would have any effect.

20 Q. Is that what your understanding of what  
21 the public knowledge was about Philip Morris, that it  
22 was an awful company and all they wanted to do was make  
23 money and that's how the public perceived them?

24 MR. BOMAN: Object to form.

25 A. I know how Philip Morris --

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1 Q. Answer the question, could you, please?  
2 Is that your understanding of what the public knowledge  
3 was about how the public perceived Philip Morris, as an  
4 awful company that couldn't be trusted and all they  
5 wanted to do was make money?

6 MR. BOMAN: Excuse me. I think he was  
7 answering the question. And if you would allow him to,  
8 he will.

9 MR. HOLMAN: Go ahead.

10 A. That is my -- that is my inference from  
11 the very low favorability Philip Morris and the tobacco

12 industry has compared to all other industries on which  
13 we have data.

14 MR. HOLMAN: Great. That's all I have. I  
15 would like the doctor to read it. Thanks very much.

16 THE WITNESS: He would like me to read what?

17 MR. BOMAN: The transcript.

18 THE WITNESS: Oh, okay.

19 MR. HOLMAN: Thank you, Doctor. If you will  
20 explain. I just -- I want you to make sure you read  
21 the deposition and have the right to make the  
22 corrections, but I'm sure David will tell you all about  
23 that.

24 THE WITNESS: Okay.

25 MR. HOLMAN: Thank you.

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1 MR. BOMAN: Thank you.

2 MS. MATCHETT: We are off the record at 2:28.

3 (The witness was excused at 2:28 p.m.)

4 (The reporter retained custody of

5 Exhibits 1, 3, 4, 5, 6, 7, 8, and 9.

6 Exhibits 2 and 10 are to be supplied by  
7 the witness and/or attorneys at a later  
8 date).

9

10

11 [SIGNATURE RESERVED]

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Kent Tedin Deposition Rivera v PM November, 2002 Page 89 of  
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1 REPORTER'S CERTIFICATE

2

3 STATE OF MISSOURI )

) SS:

4 COUNTY OF BUCHANAN )

5

I, Karen S. Rogers, Registered Professional  
6 Reporter, Certified Court Reporter, and Notary Public  
in and for the State of Missouri, do hereby certify  
7 that pursuant to notice to take deposition in a certain  
cause now pending in the United States District Court  
8 for the District of Nevada, before me came at the time  
and place set forth in the caption hereof the witness

9 MR. KENT L. TEDIN, who was by me first duly sworn; that  
the witness was examined and his examination was taken  
10 down in stenotype by me and transcribed by computer;  
that presentment of a copy of the deposition to the  
11 attorneys shall be deemed presentment to the witness;  
that the deposition may be signed at or before the time  
12 of trial; and said deposition is now herewith returned.

13 I further certify that I am not attorney for,  
counsel for, related to, or employed by any party to  
14 the action in which this deposition is taken and  
further that I am not a relative or employee of any  
15 attorney or counsel employed by the parties hereto or  
financially interested in the action.

16

17

Karen S. Rogers,  
18 RPR, CCR No. 846, Notary Public

19

20 My commission expires March 19, 2004.

21

22

23

24

25

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1 WITNESS'S NAME

2 CASE NAME

3 DATE TAKEN  
4 Upon reading the deposition and before subscribing  
thereto, the deponent indicated the following changes  
5 should be made:  
6 Page Line  
Reason for Change:  
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24  
25 Reporter: Karen S. Rogers, RPR, CCR  
Kent Tedin Deposition Rivera v PM November, 2002 Page 91 of  
92  
91  
1  
2 STATE OF )  
) ss:  
3 COUNTY OF )  
4  
5  
6 I, KENT L. TEDIN, do hereby certify:  
7 That I have read the foregoing deposition;  
8 That I have made such changes in form and/or  
9 substance to the within deposition as might be  
10 necessary to render the same true and correct;  
11 That having made such changes thereon, I  
12 hereby subscribe my name to the deposition.  
13 I declare under penalty of perjury that the  
14 foregoing is true and correct.  
15  
16 Executed the day of ,  
17 20 , at .  
18

19 KENT L. TEDIN  
20  
21 Notary Public:  
22  
23 My commission expires:  
24  
25  
Kent Tedin Deposition Rivera v PM November, 2002 Page 92 of  
92  
92  
1 SPHERION DEPOSITION SERVICES  
545 5th Avenue, Suite 900  
2 New York, NY 10017  
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5 November 20, 2002  
6  
7 Mr. David L. Boman  
SHOOK, HARDY & BACON, L.L.P.  
8 One Kansas City Place  
1200 Main Street  
9 Kansas City, MO 64105-2118  
10  
RE: Rivera v. Philip Morris  
11  
12 Dear Mr. Boman:  
13 Enclosed please find an errata sheet and the original  
signature page from the deposition transcript of Mr.

14 Kent L. Tedin. Per Mr. Holman's request, I am sending  
this to you so that you may have Mr. Tedin read and  
15 sign same.

16 Please return the executed signature page and errata  
sheet to Mr. Holman within thirty days after receiving  
17 the transcript.

18

19

20

Respectfully,

21

22 Rashid Dar

Production/Spherion Court Reporting

23

24

25